vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPEAL NO.101 OF 2003**

Sambhaji Bhimrao Patil ... Appellant

V/s.

The State of Maharashtra ... Respondent

Mr.R.C. Dhru with Savita Suryawanshi for Appellant
Mrs.V.R. Bhosale, APP, for Respondent

CORAM: **V.G. PALSHIKAR &**
**SMT.NISHITA MHATRE, JJ.**

DATED: **NOVEMBER 13, 2006**

**ORAL JUDGMENT (PER SMT.MHATRE, J.):**

. The appeal challenges the judgment and order of the I Adhoc Additional Sessions Judge, Sangli dated 5.8.2002. By this judgment, the Sessions Judge has convicted the accused under section 302 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.2,000/-.

2. Briefly stated, the prosecution case is that the accused was married to one Ratna. His wife refused to live with him and stayed with her parents. The accused was employed in Gwalior and would return home every 5 to 6 months. The accused had a grievance against his parents as he was under the impression that it was because of them that his wife refused to live with him. This grievance of the accused translated into violence against his parents. On numerous occasions, the other

villagers staying around their house had noticed him abusing his parents and beating them. It is also the case of the prosecution that Ratna was both physically and verbally abused by the accused due to which she started living with her parents. The parents of the accused had no other place to turn to and tolerated the violent and abusive behaviour of the accused. This attitude of the parents of the accused, according to the prosecution, was their undoing. The accused fatally assaulted his mother, Pramila with a metal chain used for locking suit cases. The incident occurred on 13.11.2001 and the victim of the assault succumbed to her injuries soon thereafter. The postmortem report discloses that the death of the victim occurred on account of "shock due to intra thoracic haemorrhage due to post traumatic multiple fracture ribs on left side and injury to the lower lobe of left lung". The accused was arrested and tried for having killed his mother. The trial culminated in his conviction under section 302 of the Indian Penal Code.

3. The case of the prosecution is based on circumstantial evidence. The prosecution has relied on the testimony of 13 witnesses to prove its case against the accused. The main contentions on behalf of the prosecution are that there was a history of the victim being assaulted by the accused. The accused had a motive to assault the accused. Some of the witnesses

had heard him quarrelling with his mother and had also seen him assaulting her during the day on 13.11.2001. The accused had also assaulted his father on the same day which compelled him to leave the house and sleep in the temple that night. The cruelty and the severity of the assault on him was intolerable. The accused was alone with his mother in the house after his father left for the temple. The dead body of the victim was found in the courtyard of PW7 i.e., about 100 feet away from the victim's house. The accused took no notice although PW7 informed him that his mother was lying in his courtyard. Basically, therefore, the prosecution relies on the theory of the accused having been seen last together with the deceased at about 9.30pm. It also relies upon the evidence of PW2, a minor who had seen the accused assaulting his mother in the afternoon on that day and had heard the victim's cries from her house at 9.30 pm.

4. PW8, is the complainant in this case. He is the father of the accused and the husband of the victim. He has spoken about the inhuman attacks on himself and his wife by the accused on various occasions i.e., whenever the accused returned home from Gwalior. This witness has stated that the accused who had a violent temper often beat his wife Ratna due to which she left the matrimonial home and stayed with her parents. He has also spoken about the accused having a grudge against

his wife and himself because Ratna was not willing to return to the matrimonial home and live with the accused or join him in Gwalior where he was employed. The witness has then stated that on 13.11.2001, at about 9.30pm, he and his wife Pramila were assaulted by the accused. The accused had quarrelled with them that morning as well because of his wife's refusal to live with him. The witness has then stated that the accused assaulted the victim with a chain and also with a belt. This witness left the house and went to the temple to spend that night. When he returned the next morning, he found that his wife was lying dead in the courtyard of his neighbour. The dead body was naked and there were marks of assault on the body. The accused was in their house at that point of time. This witness lodged a complaint with the police which has been treated as the First Information Report. A suggestion put to this witness in the cross-examination that, it was he who had assaulted the victim because the victim had illicit relations with another villager, has been denied. He has also denied the suggestion that he was on inimical terms with the accused since he suspected that the accused was the illegitimate son of one Prakash Patil whose wife claimed that he and the victim had illicit relations. He has stated that although he complained to the other villagers about the assault on his wife, they preferred not to interfere as they felt that the accused would not restrain himself. The witness has stated that

while the accused was beating the victim she was crying out for help but nobody came to her rescue. The defence has brought out an omission namely that he had not mentioned to the police in his complaint that he was also assaulted by the accused with a chain. This omission in our view is not material. The witness has described in detail the attack on the victim. There are no omissions or contradictions in his testimony relating to the attack on the victim.

5. PW9 is the wife of the accused. She has corroborated the deposition of her father in law, PW8. She has stated that she returned to her parents' house 5 or 6 years earlier because of the ill-treatment of her husband. She has categorically stated that the accused not only beat her but her parents in law as well. She has denied the suggestion that she returned to her father's house because of the mother's death; in fact her mother had died 14 or 15 years earlier. She has also denied the suggestion that her parents in law were addicted to liquor.

6. The evidence of PW8 has been corroborated by PW2, a 15 year old boy who lived close to the victim. The witness had seen the accused assaulting the victim on 13.11.2001 in the afternoon. His friend Mangesh who has been examined as PW6 was with him at that point of time. They had seen the accused assault his mother with

a chain. However, they proceeded on their way to play. This witness then states that on the same day between 9 and 9.30pm, he heard the victim crying out for help. The testimony of this witness has not been shaken in his cross-examination. PW6, Mangesh, who is a friend of PW2 has corroborated this testimony. He has stated that he was frightened when he saw the victim being assaulted by the accused.

7. PW7 is the neighbour in whose courtyard the dead body of the victim was found. This witness has stated that on 14.11.2001, when he woke up in the morning and came out of his house he found the dead body of the victim in his courtyard. The body was bereft of clothes. This witness called out to one Shantaram and pointed out the dead body of the victim. Both of them went to the accused and informed him that his mother was lying dead in his courtyard. However, the accused refused to take any action in the matter at that moment. In the cross-examination, the witness has denied the suggestion that the victim was habituated to drinking alcohol.

8. Another neighbour has been examined as PW10. This woman has stated that the victim visited her at 4 pm on 13.11.2001 and showed her the marks of the injuries sustained by her due to the assault by the accused. She has stated that at about 9.30 pm, she

heard the accused abusing the victim while the victim was crying for help. The witness has stated in the cross-examination that although she was willing to accompany the victim to the hospital for treatment of the injuries sustained by her, the victim refused to do so. This witness has denied that there were frequent quarrels between the victim and her husband.

9. PW1 is the panch witness who has proved the inquest panchanama. The dead body was found lying naked in the courtyard of PW7 covered only by a green saree. PW4 is the witness who has proved the spot panchanama. This panchanama was initially drawn up in the house where the victim stayed. A burnt saree was seized from that spot. Thereafter, the panchanama of the spot where the dead body was found, was drawn. PW3 is the panch witness who has proved the arrest panchanama and the seizure of the chain and clothes of the accused at the instance of the accused. The article seized from the spot both at the house and at the place where the dead body lay have been sent for analysis to the chemical analyser since they were blood stained. The Investigating Officer who has been examined as PW13 has proved the receipt of the records from the Chemical Analyser. These reports indicate that all the articles including the saree and the chain used by the accused to assault the victim were blood stained. The blood on the articles were human blood. The metal chain which was

used bore stains of blood group "O" as did the saree and the blouse of the victim. The clothes of the accused also bore blood stains belonging to "O" group. It is obvious therefore that the blood group of the deceased was "O" group. Unfortunately and surprisingly, the investigating agencies have not had the blood group of the accused determined as the samples for analysis indicated that the results were inconclusive.

10. The postmortem report has been proved by PW12. The postmortem was conducted at 11.50 am. A green saree was wrapped around the legs. The postmortem lividity was seen on the back and the buttocks. This report indicates therefore that the death occurred about 14 hours prior to the conducting of the autopsy. This time matches with the time of the assault mentioned by PW8 and other witnesses.

11. Although it is the contention of the prosecution that the victim was assaulted with a chain, it appears that not all the injuries sustained by the victim were beaded which would be the case if she had been assaulted only with a metal chain. However, PW12 has explained that there were multiple injuries including fractures which the victim had sustained ante mortem and the injuries were so mixed with each other that it was not possible to decipher the beaded appearance. The accused had not only assaulted the victim with the chain but had

also kicked her as stated by the prosecution witnesses.

12. We have considered the evidence on record with the help of the learned Advocate appearing on behalf of the accused and the learned Assistant Public Prosecutor. In our opinion, the learned trial Judge has not committed any error in convicting the accused. The prosecution has established the chain of circumstantial evidence, namely, i) the wife of the accused refused to live with him either in the matrimonial home or in Gwalior where he was employed; ii) the accused had a grievance against his parents especially his mother; iii) PW2, PW6, PW8 and PW9 have proved the assault on the victim during the day on 13.11.2001; iv) The victim was last seen together with the accused by PW8 i.e., about 9.30 pm; v) PW2 had heard the cries of the victim at about 9.30 pm as did PW10; vi) PW8 had left the house at about 9.30 pm and had gone to the temple to spend the night and in our opinion, these circumstances establish the only hypothesis which is possible and that is the culpability of the accused. All the suggestions put to the prosecution witnesses on behalf of the accused that it could have been PW8 who had assaulted her or that he had any enmity or discord with his wife have been denied.

13. In our opinion, therefore, the prosecution has proved the offence committed by the accused. We confirm

the findings of the learned Sessions Judge and dismiss the appeal.